



House of Representatives

General Assembly

File No. 781

January Session, 2009

Substitute House Bill No. 6671

House of Representatives, April 21, 2009

The Committee on Judiciary reported through REP. LAWLOR of the 99th Dist., Chairperson of the Committee on the part of the House, that the substitute bill ought to pass.

AN ACT CONCERNING THE FORFEITURE OF MONEY AND PROPERTY RELATED TO CHILD SEXUAL EXPLOITATION AND HUMAN TRAFFICKING AND THE POSSESSION OF CHILD PORNOGRAPHY.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. (NEW) (*Effective October 1, 2009*) (a) The following
2 property shall be subject to forfeiture to the state pursuant to
3 subsection (b) of this section:

4 (1) All moneys used, or intended for use, in a violation of
5 subdivision (3) of subsection (a) of section 53-21 or section 53a-86, 53a-
6 87, 53a-90a, 53a-189a, 53a-189b, 53a-192a, 53a-196a, 53a-196b or 53a-
7 196c of the general statutes;

8 (2) All property constituting the proceeds obtained, directly or
9 indirectly, from a violation of subdivision (3) of subsection (a) of
10 section 53-21 or section 53a-86, 53a-87, 53a-90a, 53a-189a, 53a-189b,
11 53a-192a, 53a-196a, 53a-196b or 53a-196c of the general statutes;

12 (3) All property derived from the proceeds obtained, directly or
13 indirectly, from any sale or exchange for pecuniary gain from a
14 violation of subdivision (3) of subsection (a) of section 53-21 or section
15 53a-86, 53a-87, 53a-90a, 53a-189a, 53a-189b, 53a-192a, 53a-196a, 53a-
16 196b or 53a-196c of the general statutes;

17 (4) All property used or intended for use, in any manner or part, to
18 commit or facilitate the commission of a violation for pecuniary gain of
19 subdivision (3) of subsection (a) of section 53-21 or section 53a-86, 53a-
20 87, 53a-90a, 53a-189a, 53a-189b, 53a-192a, 53a-196a, 53a-196b or 53a-
21 196c of the general statutes.

22 (b) Not later than ninety days after the seizure of moneys or
23 property subject to forfeiture pursuant to subsection (a) of this section,
24 in connection with a lawful criminal arrest or a lawful search, the Chief
25 State's Attorney or a deputy chief state's attorney, state's attorney or
26 assistant or deputy assistant state's attorney may petition the court in
27 the nature of a proceeding in rem to order forfeiture of such moneys or
28 property. Such proceeding shall be deemed a civil suit in equity in
29 which the state shall have the burden of proving all material facts by
30 clear and convincing evidence. The court shall identify the owner of
31 such moneys or property and any other person as appears to have an
32 interest therein, and order the state to give notice to such owner and
33 any interested person, including any victim of the crime with respect
34 to which such moneys or property were seized, by certified or
35 registered mail. The court shall promptly, but not less than two weeks
36 after such notice, hold a hearing on the petition. No testimony offered
37 or evidence produced by such owner or interested person at such
38 hearing and no evidence discovered as a result of or otherwise derived
39 from such testimony or evidence may be used against such owner or
40 interested person in any proceeding, except that no such owner or
41 interested person shall be immune from prosecution for perjury or
42 contempt committed while giving such testimony or producing such
43 evidence. At such hearing, the court shall hear evidence and make
44 findings of fact and enter conclusions of law and shall issue a final
45 order from which the parties shall have such right of appeal as from a

46 decree in equity.

47 (c) No moneys or property shall be forfeited under this section to
48 the extent of the interest of an owner or lienholder by reason of any act
49 or omission committed by another person if such owner or lienholder
50 did not know and could not have reasonably known that such moneys
51 or property was being used or was intended to be used in, or was
52 derived from, criminal activity.

53 (d) Notwithstanding the provisions of subsection (a) of this section,
54 no moneys or property used or intended to be used by the owner
55 thereof to pay legitimate attorney's fees in connection with his or her
56 defense in a criminal prosecution shall be subject to forfeiture under
57 this section.

58 (e) Any property ordered forfeited pursuant to subsection (b) of this
59 section shall be sold at public auction conducted by the Commissioner
60 of Administrative Services or the commissioner's designee.

61 (f) The proceeds from any sale of property under subsection (e) of
62 this section and any moneys forfeited under this section shall be
63 applied: (1) To payment of the balance due on any lien preserved by
64 the court in the forfeiture proceedings; (2) to payment of any costs
65 incurred for the storage, maintenance, security and forfeiture of any
66 such property; and (3) to payment of court costs. The balance, if any,
67 shall be deposited in the child sexual exploitation and human
68 trafficking assets forfeiture revolving account established under
69 section 2 of this act.

70 Sec. 2. (NEW) (*Effective October 1, 2009*) (a) There is established an
71 account of the General Fund to be known as the "child sexual
72 exploitation and human trafficking assets forfeiture revolving account"
73 for the purpose of providing funds for sexual assault treatment and
74 education programs and for use in the detection, investigation,
75 apprehension and prosecution of persons for the violation of the laws
76 pertaining to the sexual assault, sexual exploitation or sexual abuse of
77 children, trafficking in persons and the registration of sexual offenders.

78 (b) The account shall consist of the proceeds from the sale of
79 property and moneys received and deposited pursuant to section 1 of
80 this act.

81 (c) Moneys in such account shall be distributed as follows: (1)
82 Seventy per cent shall be allocated to the Department of Public Safety
83 and local police departments pursuant to subsection (d) of this section,
84 fifteen per cent of which shall be used for purposes of sexual assault
85 treatment and education programs and eighty-five per cent of which
86 shall be used for the detection, investigation, apprehension and
87 prosecution of persons for the violation of laws pertaining to the
88 sexual assault, sexual exploitation or sexual abuse of children,
89 trafficking in persons and the registration of sexual offenders and for
90 the purposes of police training on sexual assault investigation and rape
91 crisis intervention as required by section 7-294f of the general statutes,
92 as amended by this act, (2) twenty per cent shall be allocated to the
93 Department of Mental Health and Addiction Services for the
94 assessment, treatment and management of persons with problem
95 sexual behaviors and for educational programs concerning problem
96 sexual behaviors, and (3) ten per cent shall be allocated to the Division
97 of Criminal Justice for use in the prosecution of persons for the
98 violation of laws pertaining to the sexual assault, sexual exploitation or
99 sexual abuse of children, trafficking in persons and the registration of
100 sexual offenders.

101 (d) Expenditures from the account allocated to the Department of
102 Public Safety and local police departments shall be authorized by a
103 panel composed of: (1) The Commissioner of Public Safety or the
104 commissioner's designee, (2) the commander of the child abuse and
105 neglect unit within the Division of State Police within the Department
106 of Public Safety or the commander's designee, and (3) the president of
107 the Connecticut Police Chiefs Association or the president's designee.
108 The panel shall adopt procedures for the orderly authorization of
109 expenditures, subject to the approval of the Comptroller. Such
110 expenditures may be authorized only to the Department of Public
111 Safety and to organized local police departments within this state.

112 Such expenditures shall be held by the Department of Public Safety
113 and the various organized local police departments in accounts or
114 funds established for that purpose. In no event shall the expenditures
115 be placed in a state or town general fund and in no event shall the
116 expenditures be used for purposes other than those provided in
117 subdivision (1) of subsection (c) of this section. The panel shall ensure
118 the equitable allocation of expenditures to the Department of Public
119 Safety or any local police department which participated directly in
120 any of the acts which led to the seizure or forfeiture of the property so
121 as to reflect generally the contribution of said department or such local
122 police department in such acts. The panel shall authorize expenditures
123 from the account for the reimbursement of any organized local police
124 department which has used its own funds in the detection,
125 investigation, apprehension and prosecution of persons for the
126 violation of laws pertaining to the sexual assault, sexual exploitation or
127 sexual abuse of children, trafficking in persons and the registration of
128 sexual offenders and which makes application to the panel for
129 reimbursement.

130 (e) Moneys remaining in the child sexual exploitation and human
131 trafficking assets forfeiture revolving account at the end of a fiscal year
132 shall not revert to the General Fund but shall remain in the revolving
133 account to be used for the purposes set forth in this section.

134 Sec. 3. Section 7-294f of the general statutes is repealed and the
135 following is substituted in lieu thereof (*Effective October 1, 2009*):

136 Each police basic training program conducted or administered by
137 the Division of State Police within the Department of Public Safety, the
138 Police Officer Standards and Training Council established under
139 section 7-294b or municipal police department in the state shall include
140 a course on sexual assault investigation and rape crisis intervention
141 and each review training program conducted by such agencies shall
142 make provision for such a course.

143 Sec. 4. Section 53a-196d of the general statutes is repealed and the
144 following is substituted in lieu thereof (*Effective October 1, 2009*):

145 (a) A person is guilty of possessing child pornography in the first
146 degree when such person knowingly possesses (1) fifty or more visual
147 depictions of child pornography, or (2) one or more visual depictions
148 of child pornography that depict the infliction or threatened infliction
149 of serious physical injury.

150 (b) Possessing child pornography in the first degree is a class B
151 felony and any person found guilty under this section shall be
152 sentenced to a term of imprisonment of which five years of the
153 sentence imposed may not be suspended or reduced by the court.

This act shall take effect as follows and shall amend the following sections:		
Section 1	<i>October 1, 2009</i>	New section
Sec. 2	<i>October 1, 2009</i>	New section
Sec. 3	<i>October 1, 2009</i>	7-294f
Sec. 4	<i>October 1, 2009</i>	53a-196d

JUD *Joint Favorable Subst.*

The following Fiscal Impact Statement and Bill Analysis are prepared for the benefit of the members of the General Assembly, solely for purposes of information, summarization and explanation and do not represent the intent of the General Assembly or either chamber thereof for any purpose. In general, fiscal impacts are based upon a variety of informational sources, including the analyst's professional knowledge. Whenever applicable, agency data is consulted as part of the analysis, however final products do not necessarily reflect an assessment from any specific department.

OFA Fiscal Note

State Impact:

Agency Affected	Fund-Effect	FY 10 \$	FY 11 \$
Criminal Justice, Div.	GF - Revenue Gain	4,125	5,500
Public Safety, Dept.	GF - Revenue Gain	28,500	38,000
Mental Health & Addiction Serv., Dept.	GF - Revenue Gain	8,250	11,000
Dept. of Administrative Services	GF - None	None	None
Total	GF - Revenue Gain	40,875	54,500

Note: GF=General Fund

Municipal Impact:

Municipalities	Effect	FY 10 \$	FY 11 \$
Various Municipal Police Departments	Revenue Gain	Minimal	Minimal

Explanation

The bill establishes a revolving asset seizure account for crimes of child sexual exploitation, human trafficking and the possession of child pornography. This new account would function like the existing drug asset forfeiture account, which generated \$2.26 million in state revenue during FY 08. The number of convictions under the statutes included in the bill is approximately 2.4% of the number of convictions under statutes related to the drug asset forfeiture account. Any state revenue gain under the bill is therefore estimated to be 2.4% of \$2.26 million, or \$54,400 annually.

In accordance with the bill, the funds would be distributed to state agencies in the amounts indicated in the table above and use of these funds would be restricted to those purposes enumerated in the bill. A

portion of the funds provided to the Department of Public Safety under the bill would be distributed to local police departments in accordance with the bill's procedures. Any overtime or other costs to the Division of Criminal Justice to bring civil actions under the bill would be covered by the revenue gain to that agency.

The bill expands training which the Department of Public Safety and the Police Officer Standards and Training Council must provide to include sexual assault investigation. It is anticipated that each respective agency would be able to incorporate such training into current basic training curriculums at no additional cost.

The Department of Administrative Services could process property forfeited under this bill through the normal course of its duties and at no additional cost.

The Out Years

The annualized ongoing fiscal impact identified above would continue into the future subject to inflation.

*Sources: CORE-CT Flexible Ledger Analysis Tool (Revenues)
Judicial Department's Quarterly Criminal/Motor Vehicle Statute Files*

OLR Bill Analysis**sHB 6671*****AN ACT CONCERNING THE FORFEITURE OF MONEY AND PROPERTY RELATED TO CHILD SEXUAL EXPLOITATION AND HUMAN TRAFFICKING AND THE POSSESSION OF CHILD PORNOGRAPHY.*****SUMMARY:**

This bill establishes forfeiture procedures for (1) property used or intended to be used to commit or facilitate the commission of various crimes, (2) money used or intended to be used to commit these crimes, (3) the direct and indirect proceeds of the crimes, and (4) property derived from the proceeds.

To forfeit the property, the bill requires a civil court proceeding with notice and a hearing and that the state prove all material facts by clear and convincing evidence. An owner or someone with an interest in the property can offer evidence and the court can protect their interests under certain circumstances. The court's decision can be appealed. Any forfeited money or the proceeds from forfeited property sold at auction must be deposited into a child sexual exploitation and human trafficking assets forfeiture revolving account, which the bill establishes.

The bill makes a person guilty of first-degree possession of child pornography if he or she knowingly possesses one or more visual depictions of child pornography showing the infliction or threatened infliction of serious physical injury. This crime is a class B felony punishable by five to 20 years in prison, up to a \$15,000 fine, or both. The crime carries a five-year mandatory minimum sentence.

Lastly, the bill requires police basic training programs to include a course on sexual assault investigations. The requirement applies to

programs conducted or administered by the State Police, the Police Officer Standards and Training Council, and municipal police departments.

EFFECTIVE DATE: October 1, 2009

CRIMES FOR WHICH PROPERTY MAY BE FORFEITED

The crimes are:

1. risk of injury to children involving the permanent transfer or receipt of the legal or physical custody of a child under age 16 for payment,
2. first- and second-degree promoting prostitution,
3. enticing a minor,
4. voyeurism or disseminating voyeuristic material,
5. trafficking in persons,
6. employing or promoting a minor in an obscene performance, or
7. importing child pornography.

FORFEITURE PROCEEDING

The bill allows a prosecutor to petition the court to order forfeiture within 90 days of seizing money or property that is subject to forfeiture in connection with a lawful criminal arrest or search. The suit is an in rem proceeding (a proceeding against the property) that is a civil suit in equity. The bill establishes the following procedures:

1. the court must identify crime victims, property owners, and others that appear to have an interest in the property and the state must notify them by certified or registered mail;
2. the court must hold a hearing within two weeks after the notice unless it delays the hearing for good cause;

3. the state must prove all material facts by clear and convincing evidence;
4. the court must hear evidence, make factual findings, reach legal conclusions, and issue a final order; and
5. the parties can appeal the order as with a decree in equity.

The bill prohibits testimony or evidence offered by an owner or interested person at the hearing from being used against them in any other proceeding. This also applies to evidence discovered as a result of or derived from their testimony or evidence. However, these individuals may be prosecuted for perjury or contempt based on their testimony or production of evidence.

The bill prohibits an owner's or lienholder's interest from being forfeited due to someone else's act or omission if the owner or lienholder did not know and could not have reasonably known that the money or property was (1) being used in, (2) intended to be used in, or (3) derived from, criminal activity. It also protects from forfeiture money or property an owner used or intended to be used to pay the legitimate fees of a criminal defense attorney.

DISPOSITION OF FORFEITED PROPERTY

The bill requires the Department of Administrative Services commissioner or her designee to sell forfeited property at public auction. Forfeited money and the proceeds from any auction must be used to pay (1) the balance due on any lien the court preserved (although the bill also provides that certain lienholder interests cannot forfeit); (2) storage, maintenance, security, and forfeiture costs; and (3) court costs. Any balance must be deposited in the child sexual exploitation and human trafficking assets forfeiture revolving account which the bill creates as a separate, non-lapsing General Fund account.

CHILD SEXUAL EXPLOITATION AND HUMAN TRAFFICKING ASSETS FORFEITURE ACCOUNT

Account funds must be used to (1) pay for sexual assault treatment

end education programs; (2) detect, investigate, catch, and prosecute violators of child sexual assault, sexual exploitation, or sexual abuse and trafficking in persons crimes; and (3) register sexual offenders.

The money in the account must be distributed as follows:

1. 70% to the Department of Public Safety and local police departments (15% of this amount must be used for sexual assault treatment and education programs and 85% to enforce sexual assault and exploitation and trafficking crimes, register sex offenders, and police training on sexual assault investigation and rape crisis intervention);
2. 20% to the Department of Mental Health and Addiction Services for assessing, treating, managing, and educating people with problem sexual behaviors; and
3. 10% to the Division of Criminal Justice for prosecuting people charged with child sexual assault, abuse, and exploitation crimes; trafficking in persons; and sex offender registration violations.

PANEL RESPONSIBLE FOR ALLOCATING FUNDS TO LAW ENFORCEMENT AGENCIES

The bill requires a panel to authorize expenditures from the fund allocated to the Department of Public Safety and local police departments. The panel is composed of the public safety commissioner, commander of the State Police's Child Abuse and Neglect Unit, and the president of the Connecticut Police Chiefs Association, or their designees.

The panel must adopt a procedure for distributing the funds, subject to the comptroller's approval. Recipients must place the funds in specially established accounts used only for the above-stated purposes. The bill explicitly prohibits the funds from being placed in the state's or a municipality's general fund.

The panel must ensure that the funds are equitably distributed to

reflect the contributions each police department, including the Department of Public Safety, made in the property's seizure of forfeiture. It must authorize the reimbursement of local police departments that used their own funds to meet costs that are payable from the assets forfeiture revolving account when reimbursement is requested.

BACKGROUND

Related Law—Seizure of Property as Nuisance

The law provides similar procedures to those in the bill to allow the state to seize property believed to be possessed, controlled, designed, or intended for use or which is, has been, or may be used as a means of committing a crime. The property must have been seized as a result of a lawful search or arrest and the state must claim it as a nuisance. Under these forfeiture provisions, money or property is destroyed or given to a charitable or education institution or government agency or institution. Money or proceeds from auctioning property goes to the General Fund (CGS § 54-36a).

Related Bill

sHB 6339, also favorably reported by the Judiciary Committee, establishes forfeiture procedures for money and property illegally obtained by (1) someone in connection with the offer, sale, or purchase of securities or (2) investment advisors and people who solicit business on their behalf.

COMMITTEE ACTION

Judiciary Committee

Joint Favorable Substitute

Yea 42 Nay 0 (04/03/2009)